

CTJ/dd

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

DIRECTV, INC.,

Plaintiff,

V.

JAMES GARCIA,

Defendant.

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Civil Action No. 4:03-CV-422-A

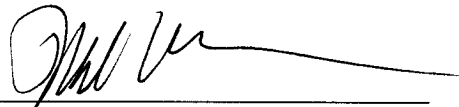
FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

2004 FEB 25 AM 8:47

PLAINTIFF'S SUPPLEMENT TO REQUIRED FILING PURSUANT TO THE
COURT'S FEBRUARY 19, 2004, ORDER

Pursuant to the Court's February 19, 2004, Order ("Order"), and Plaintiff DIRECTV, Inc. ("DIRECTV") prior response, attached are copies of transcripts from the state court proceedings received after 3:00 pm on Tuesday, February 24, 2004, that are being provided as requested by the Court.

Respectfully Submitted,

By: 

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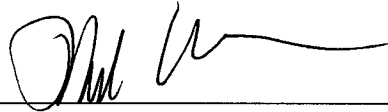
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CERTIFICATE OF SERVICE

This is to certify that on the 25th of February, 2004, I served the foregoing document on counsel for defendant in the foregoing matter by hand delivery as follows:

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Michael G. Brown

REPORTER'S RECORD

TRIAL COURT CAUSE NO. 00-07374-K

IN RE: JOHN CHARLES MARCO *

IN THE DISTRICT COURT
OF DALLAS COUNTY, TEXAS
160TH JUDICIAL DISTRICT

HEARING

COPY

BE IT REMEMBERED, that on November 21, 2003, the
following proceedings came on to be heard in the above-entitled
and numbered cause before the HONORABLE JOSEPH M. COX, Judge of
the 160th Judicial District Court of Dallas County, Texas.

Proceedings reported by machine shorthand.

A P P E A R A N C E S:

MS. HOLLIE GREENE
SBOT No. 24006564
1414 West Randol Mill Road
Suite 118
Arlington, Texas 76012
817 226-8100

MR. JOHN CHARLES MARCOS
2813 Owen Lane
Mesquite, Texas 75150

APPEARING PRO SE

C H R O N O L O G I C A L I N D E X

HEARING

November 21, 2003

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A L P H A B E T I C A L I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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P R O C E E D I N G S

THE COURT: John Charles Marco, 00-07374-K.

Mr. Marco, how are you doing?

MR. MARCO: Pretty good.

THE COURT: Mr. Marco, let me tell you a couple of things before we get going here.

You understand that I issued an order to show cause for you today based upon some allegations that have been made about your process serving in the past?

MR. MARCO: Yes, sir.

THE COURT: Is that a yes?

MR. MARCO: Yes.

THE COURT: Let me tell you this before we go forward and before you either testify or listen to anybody or before you wish to say anything. You have the right to remain silent, okay, you don't have to say anything, if you don't desire to say anything.

Some of the allegations against you that you have signed returns of service, filed those, they have been inaccurate. That could lead to some problems for you.

MR. MARCO: Uh-huh.

THE COURT: From a criminal standpoint. So you need to decide for yourself if you're going to say anything today or not say anything today, all right?

MR. MARCO: Yes, sir.

1 THE COURT: Do you have an attorney?

2 MR. MARCO: No, I don't.

3 THE COURT: Do you wish to get an attorney?

4 MR. MARCO: Yes, I do. I didn't know it was that
5 serious.

6 THE COURT: It's serious. It's very serious.

7 Here is what we're going to do today then. I'm going to
8 listen to everybody that has come here, since there's some
9 lawyers back here. We're going to hear what they have to say,
10 all right?

11 And then we'll reconvene, if necessary, where you'll have
12 a chance to have an attorney, okay?

13 MR. MARCO: Yes, your Honor.

14 THE COURT: So let's just see what everybody has to
15 say here, then we'll reconvene.

16 My advice to you is take a seat right here right at one of
17 these tables and you can just listen and see what happens,
18 okay?

19 MR. MARCO: Yes, your Honor. Thank you.

20 THE COURT: You bet.

21 All right, who is going to testify with respect to John
22 Charles Marco?

23 MS. GREENE: I think I'm going first, then everyone
24 else I think is going to testify. Do you want us to get --

25 THE COURT: All right, Mr. Rosser, and anybody that

1 wants to come up and testify, please step forward up here and
2 we'll do them one at a time. If I could get all of you to
3 raise your right hand.

4 (Whereupon four witnesses were sworn)

5 THE COURT: Ms. Greene, do you want to go first?

6 HOLLIE GREEN,

7 having been sworn, testified as follows:

8 MS. GREENE: On October 22nd, 2003, I notified
9 Sandra Brimm, who is an adjustor with Allstate Insurance,
10 that, in two separate cases, her insured was served and that
11 her answer was past due. I faxed her the return citations in
12 both of the cases as proof. Later that day she called me,
13 stating that she had spoke with both of her insureds and they
14 each adamantly denied ever being served.

15 The very same day I notified Steve Frazier, who is an
16 adjustor with Farmers Insurance that his Defendant insured was
17 served and the answer was past due. I faxed him the return
18 citation also.

19 Later on that day he called me and told me that his
20 insured adamantly denied being served.

21 At that time I pulled the return, the file stamped return
22 citation copies that I had in my office, and I noticed that the
23 same process server, John Charles Marco, Junior, was the same
24 one on all three citations as the one that served the
25 Defendant.

1 I called Jack Rosser, who was my process server that I
2 used, and told him about this situation. I faxed him the
3 return citations in question. And the next day, it was my
4 understanding, that Mr. Marco was terminated.

5 THE COURT: Okay.

6 MS. GREENE: On October 24th, 2003, I got all of the
7 citations reissued, and they were all re-served within 72
8 hours. And in talking with Jack on October 24th, 2003, he
9 informed me that there were two other attorneys that had
10 reported similar incidents to him the day before.

11 It was three at the time I wrote you the letter. It's now
12 four confirmed cases that I have concrete proof on. The
13 Defendants were all served initially back in September of 2003.
14 However, the first one involves Wilson A. Gonzales and Maria
15 Leal versus Aaron Sanders in the 298th. Allegedly the
16 defendant was served on August 27, 2003 by a Rule 106.

17 And that did not occur because I got the citation
18 reissued, and I served it again in the same fashion, and I got
19 a call from an attorney with Ben Abbott's office, who said he
20 got the citation on his door and didn't know anybody by that
21 name. He had lived there for a few months and he hadn't
22 received anything prior to that.

23 The other one involves a case by the name of Marlene
24 Canari versus Kim Hoffman Phillips in the 95th Court. The
25 defendant was allegedly served on September 18th, 2003, in

1 Waxahachie. I notified her adjustor when I noticed that her
2 answer was also overdue. She stated her Defendant was not
3 insured, or her Defendant was not served, and so I arranged for
4 citation to be reissued. And that person was re-served
5 correctly.

6 Also in one of your cases, Francisco Arius and Nancy Arius
7 versus Amy Herrington. This was one of the instances with
8 Sandra. She allegedly was served on August the 5th, 2003, in
9 The Colony. She was not served. She adamantly denied being
10 served. I got the citation reissued and she was re-served and
11 an answer has been filed in her case.

12 Another case involves Jose Guerrero and John Guerrero
13 versus Trae Atchison in the 162nd. This was the other one from
14 Sandra Brimm where the defendant was allegedly served on the
15 18th of November, between the 18th of October.

16 And this is the first one that actually tipped me off
17 because when I got -- when I called the adjustor and she told
18 me she hadn't been served, I called Jack and I asked Jack for
19 more specific information. What did the person look like, a
20 physical description, perhaps she misidentified herself. It
21 has happened before. Jack gave me the physical description of
22 the person. I called Sandra back and I told her that's what
23 the person looked like, and she adamantly denied being served.
24 Jack verified that with her and she was later re-served
25 correctly and filed an answer appropriately.

1 THE COURT: Did she look like the person who actually
2 was served, or you say was actually served?

3 MS. GREENE: You know, I don't know, I'm not really
4 sure, but she lives --

5 THE COURT: Well, we'll find out.

6 MS. GREENE: She's a truth worthy person, lives in
7 Highland Park, has got a lot of money, I don't think she would
8 lie about something like this.

9 The fifth confirmed case that I had in Dallas County was
10 Teresa Rodriguez versus Charles Oney in the 101st. He was
11 allegedly served on August 5, 2003, in Allen. This is the case
12 that involves Steve Frazier from Farmers. When I notified
13 Steve again, the person adamantly denied being served. I got
14 the citation reissued, served correctly, and he filed an
15 answer.

16 Since I'm the one that's in charge of service at my firm,
17 that's how I discovered it by following up on things. And I
18 also have three suspected ones in Tarrant County that I haven't
19 been able -- I'm still waiting on appropriate confirmation, but
20 it wouldn't surprise me at this time.

21 THE COURT: Do you have copies of anything with the
22 returns of service you say are invalid?

23 MS. GREENE: Yes, I do. They're not like certified.

24 THE COURT: That's fine. I would just like to see
25 them. Thank you.

1 MS. GREENE: You're welcome.

2 THE COURT: Anything else?

3 MS. GREENE: I don't think so. Just that All State
4 has been extremely cooperative in the cases with Trae Atchison
5 and Amy Herrington. She stated their defendants are willing to
6 sign an affidavit that they were not served at that time and
7 place, and that they were willing to cooperate with me in
8 anything else I may need them for in the future, which I really
9 appreciate that.

10 And also I believe Kim Hoffman Phillips is also going to,
11 I suspect, also.

12 It further confirmed to me that they were not served the
13 first time because when they got served the second time, they
14 immediately turned it over to their insurance company. Perhaps
15 they had -- obviously they had been tipped off because they had
16 called them, but that shows me they didn't get served and then
17 just throw it away in the trash or forget about it. They knew
18 it was coming. They're we will educated people.

19 THE COURT: Okay. All right, anything else?

20 MS. GREENE: I also believe it's a conflict for John
21 Marco's wife Cindy to have her papers still intact, because if
22 John's papers are pulled today, but she still has permitted
23 access to the return citations or subpoenas for the Court, I
24 believe that puts other defendants and attorneys at risk of
25 perhaps fraudulent citations being filed.

1 THE COURT: Okay. Thank you very much.

2 All right, who is next?

3 Mr. Hindman, are you going to testify?

4 MR. HINDMAN: I am, your Honor.

5 THE COURT: Come on up.

6 MICHAEL HINDMAN,
7 having been sworn, testified as follows:

8 MR. HINDMAN: Michael Green versus Andrea Adams,
9 which I think is Cause Number 03-07204, in the 160th District
10 Court, the Court that we're before here today, obviously, I
11 served the defendant, or I asked Jack Rosser the process server
12 to serve the defendant in this case. Mr. Rosser evidently had
13 assigned the service to Mr. Marco.

14 The citation was filed and a copy was given to me. It was
15 on file with the Court. And it is on file with the Court. We
16 were then put on the dismissal docket after no answer was
17 filed. I called my client Michael Green, because I knew in
18 this particular case he was a passenger in the automobile of
19 Ms. Adams, the defendant, and they were friends. And I asked
20 him to tell her to turn her papers over to her insurance
21 company. And he did. And she reported back that she had never
22 received any papers at all.

23 I explained to Mr. Green that it was very important that
24 he did so, because if she didn't do so, that her insurance
25 company could argue that she wasn't cooperating in the defense,

1 and therefore deny any coverage whatsoever, and he would end up
2 with a judgment.

3 So he proceeded to get together with her again to discuss
4 the matter. He called me back while they were visiting and
5 said, she is positive she was never served any papers
6 whatsoever. The matter by that time had already been set for
7 default. I think it was on November 4th of this year. And
8 just a day or two prior to that I had learned about this
9 problem from talking to Ms. Greene and Mr. Rosser, that he
10 believed -- when we found out that Mr. Marco had allegedly
11 served those papers and filed the citation that this was
12 starting a -- a pattern was forming with Mr. Marco.

13 So I looked through some previous citations which I had
14 already taken default and I found two, one case I can remember
15 the name of is Vivian Washington, which is in the 14th. And I
16 looked at that one again, it was Mr. Marco. And there was
17 another case where that was also the case. And I'll say from
18 experience I probably filed over 100 lawsuits a year, and to
19 have three or four defaults occur within a span of a month, as
20 I did in this case, or default situations occur within a span
21 of a month has never happened ever.

22 And this case, all of the situations where that happened,
23 the alleged process server was Mr. Marco. Mr. Marco had signed
24 the citations in all of those cases.

25 So in my opinion, from my experience, to have that happen

1 with that regularity, and then to learn from other attorneys, I
2 know Ms. Greene also files a lot of lawsuits, and to have this
3 happen six, seven, eight, nine times in a span of a month or
4 two, as it has here, indicates to me, that alone, in addition
5 to my experience in talking with my client Ms. Adams, that
6 these defendants were not served.

7 That is my opinion. Thank you.

8 THE COURT: All right, who is next?

9 RONALD MCCLAIN,
10 having been sworn, testified as follows:

11 MR. MCCLAIN: Your Honor, my name is Ron McClain, I
12 work for the law firm of Ferrer Poirot Wansbrough here in
13 Dallas.

14 THE COURT: Okay.

15 MR. MCCLAIN: Unfortunately, my memory is not as
16 sharp as the young lady that had everything documented because
17 she was, you know, right on top of all of this service. It
18 came to light in our situation when we got one invoice with six
19 cases served from Alliance Process group. Sometime following
20 that, we received a call from a defendant -- actually, let me
21 back up a minute.

22 As soon as we get the returns in it's standard practice in
23 our office to forward those to the handling insurance adjustor
24 so they can do what they need to do to get answers filed or
25 whatever.

1 In the 18 some years I've been doing this, I've taken
2 several defaults in insurance situations, and never had one
3 stick. So rather than waste my time, I try to get it done in
4 the initial outset and get cases served.

5 So all of those were given, and actually the -- one of the
6 defendants, a Mr. Richard Fraeling in one of the cases filed,
7 all of these were filed in County Courts at Law vehemently
8 denying that he had ever been served any type of papers.

9 And he was questioned regarding, well, do you really know
10 what all of this is? And just so happens, he is also a
11 licensed attorney here in Dallas, and he was very familiar with
12 that situation. So we started looking at the citations. I've
13 got a copy for the Court to review. In each of these six
14 cases, I only have one confirmed case, that's Mr. Fraeling's
15 case, Perez versus Fraeling in County Court Number 3, I
16 believe, Cause Number 03-08974.

17 The others are suspect because all of them were the same
18 situation that Mr. Hindman described, where generally you file
19 your lawsuit and before too awful long the answer comes. In
20 all of these the adjustor was not aware of any type of service,
21 and had not heard from their defendants. However, in all of my
22 cases, answers had been filed.

23 I do note that if you pay careful attention to those
24 citations, they're in time served order the way I handed them
25 to the Court, and the very last two, Prado versus Hardy, where

1 Mr. Prado was served in Seagoville at 11:35 a.m. on August the
2 2nd. And the very last one, Jennifer Johns, the defendant was
3 served at 11:39 a.m. in Irving, Texas. That would take a
4 pretty amazing feat to get that accomplished.

5 There is other discrepancies that you might find in those.
6 They were all picked up the same day at the same time, all
7 served the same day in that morning of August the 2nd between
8 8:50 a.m. and 11:39 a.m.

9 The one for Mr. Fraeling and one on the cases of Deleon
10 versus Bretado are in the same zip code; however, they are
11 served at different -- there's two other services in different
12 parts of the City. And it comes back to that one. So it just
13 doesn't follow any particular pattern on someone that's
14 experienced in serving and driving all over the City.

15 And that's pretty much -- I would imagine that
16 Mr. Fraeling would be more than happy to offer testimony in
17 this case. His attorney has filed an answer denying service.
18 Obviously the fact that answers have been filed negates the
19 need for re-service. But all of them either have been or will
20 be notified of the discrepancies in due course.

21 THE COURT: Okay, thank you, sir.

22 Mr. Rosser.

23 MR. ROSSER: Good morning, your Honor.

24 THE COURT: What is it you wish to tell the Court?

25 JACK ROSSER,

1 having been sworn, testified as follows:

2 MR. ROSSER: My name is Jack Rosser, I'm the sole
3 proprietor of Alliance Process Group. I started my business 14
4 years ago. I have various subcontractors that I issue papers
5 to for service. One happens to be Mr. John Charles Marco, Jr.
6 I was notified by Ms. Hollie Greene of The Guerrero Law Firm,
7 I believe it was in August of this year, of some discrepancies
8 with his documents that he returned to the Court.

9 I asked Mr. Marco to come to my office and we spoke about
10 it. He vehemently denied that he made service -- he had made
11 service, and denied he didn't.

12 At that time I no longer use him as a private process
13 server.

14 Since then, there's been several other occasions that
15 you've already heard from, Mr. Hindman and Ron McClain. And
16 that's all I have to offer at this time. However, I will say
17 that all of the papers that Mr. Marco said he had served, I've
18 seen that they've been re-served properly.

19 THE COURT: At any time did Mr. Marco admit to you
20 that he did not serve some of these people?

21 MR. ROSSER: No, he never did.

22 THE COURT: He never denied serving them?

23 MR. ROSSER: That's correct.

24 THE COURT: Very good, sir. Anything else?

25 MR. ROSSER: No.

1 THE COURT: Anyone else who wishes to testify
2 regarding any of this?

3 I don't know what you two -- are y'all here for
4 something?

5 SPECTATOR: We're here with them, your Honor.

6 THE COURT: Anybody else wish to say anything?

7 Mr. Marco, the allegations against you are serious. And
8 as I said, you're entitled to an attorney, because I believe
9 you should understand your rights and whether or not you should
10 say anything at all to me.

11 Because I have some questions for you. Okay. Let me ask
12 you at this time, are you willing to answer my questions, or do
13 you wish to wait for an attorney to be present?

14 MR. MARCO: I will wait for an attorney.

15 THE COURT: Okay, very good.

16 What I'm going to do, I'm going to suspend your right to
17 serve process at this time. I'll have a hearing sometime in
18 December. And I'm going to give you some time to get a lawyer.
19 Okay?

20 MR. MARCO: Okay.

21 THE COURT: I'll probably have a hearing in another
22 30 days from now. My court administrator will send you a
23 notice of it, okay?

24 MR. MARCO: Yes, sir.

25 THE COURT: 2813 Owen Lane in Mesquite, is that your

1 address?

2 MR. MARCO: Yes, your Honor.

3 THE COURT: Okay, very good. We'll send you out a
4 notice to reappear back with your lawyer in December.

5 MR. MARCO: Yes, your Honor.

6 THE COURT: Some or all of these lawyers may wish to
7 return. Maybe they won't. But the next hearing is going to be
8 between you and me, and we're going to discuss the allegations
9 that have been raised against you.

10 MR. MARCO: Yes, your Honor.

11 THE COURT: And at that time you'll need some counsel
12 to advise you on whether or not to answer my questions.

13 MR. MARCO: Yes, your Honor.

14 THE COURT: Okay, very good. We're adjourned.

15 MS. GREENE: May I say something else before you go
16 off the record, please?

17 Will Donna be sending me notice of that hearing also?

18 THE COURT: Yes, we'll let everybody know.

19 MS. GREENE: I'll take care of distributing it to
20 everyone that was here, since I gave it to them the first time.

21 THE COURT: Okay.

22 MS. GREENE: Also at the reconvenement in 30 days,
23 can we also address the issue of Cindy Marco's papers?

24 THE COURT: We'll consider it, if you would like. At
25 this time we're not going to do anything about it.

1 Okay?

2 MS. GREENE: Thank you, sir.

3 THE COURT: Very good. Thank you very much.

4 Everybody is released. We'll see you in probably 30 days
5 or so. Is there any time anybody is going to be out of town
6 the third or the fourth week in December, the week before
7 Christmas?

8 MS. GREENE: I will be here.

9 MR. MARCO: I'll be here.

10 THE COURT: All right. Thank you.

11 END OF PROCEEDINGS

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1 THE STATE OF TEXAS

2 COUNTY OF DALLAS

3
4 I, SHARRON RODRIGUEZ RANKIN, Official Court Reporter in and
5 for the 160th Judicial District Court of Dallas County, State
6 of Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all portions of
8 evidence and other proceedings directed in writing by counsel
9 for the parties to be included in this Volume of the Reporter's
10 Record in the above styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported by me.

12 I further certify that this transcription of the
13 proceedings truly and correctly reflects the exhibits, if any,
14 offered by the respective parties.

15 I further certify that the total cost for the preparation
16 of this Reporter's Record is \$100 and was paid.

17 WITNESS my hand this the 24th day of February, 2004.

18
19 

20 SHARRON RODRIGUEZ RANKIN
21 Official Court Reporter
22 Certificate Number 1082
23 Expiration Date: 12-31-04
24 160th District Court
25 4th Floor Allen Courts Bldg.
(214) 653-6938

REPORTER'S RECORD

TRIAL COURT CAUSE NO. 00-07374-K

IN RE: JOHN CHARLES MARCO *

IN THE DISTRICT COURT

OF DALLAS COUNTY, TEXAS

160TH JUDICIAL DISTRICT

HEARING

COPY

BE IT REMEMBERED, that on December 19, 2003, the following proceedings came on to be heard in the above-entitled and numbered cause before the HONORABLE JOSEPH M. COX, Judge of the 160th Judicial District Court of Dallas County, Texas.

Proceedings reported by machine shorthand.

1 A P P E A R A N C E S:

2 MS. HOLLIE GREENE
3 SBOT No. 24006564
4 1414 West Randol Mill Road
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6 Arlington, Texas 76012
7 817 226-8100

8 MR. JOHN CHARLES MARCOS
9 2813 Owen Lane
10 Mesquite, Texas 75150

11 APPEARING PRO SE

12 MR. ARCH MCCALL
13 Attorney at Law

14 APPEARING FOR MR. MARCO

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C H R O N O L O G I C A L I N D E X

HEARING

December 19, 2003

WITNESS OR PROCEEDINGPAGEANDREA STOLLER

DIRECT TESTIMONY

13

CROSS-EXAMINATION BY MR. MCCALL

15

P R O C E E D I N G S

THE COURT: Do you have a lawyer?

THE WITNESS: Yes.

THE COURT: Who is your lawyer?

MR. MCCALL: Arch McCall.

THE COURT: Good morning.

Can you tell me your name again?

MR. MCCALL: My name is Arch McCall, your Honor, and I have been approached, but not yet retained by Mr. John Charles Marco. And he has explained to me that there is a situation where there is this hearing to show cause, and all he gave me was this piece of paper.

He's not been served with any specific allegations, so I said, well, you know, once we get fully retained, then I need to get a copy of the entire file. I imagine there will be something in there that explains everything.

THE COURT: There is not. He is well aware of what he has been alleged to have done.

MR. MCCALL: I assume that he's presumed innocent. He was given Miranda warnings.

THE COURT: Right.

MR. MCCALL: Unless and until there is something in writing that specifies the dates, times of dates and locations --

THE COURT: You're misunderstanding what this hearing

1 is about. I'm not going to throw Mr. Marco in jail. This is
2 to revoke his license to serve process. And I told him at the
3 last hearing that he would be wise to get a lawyer because what
4 he has alleged to have done is very serious in that he has
5 perhaps falsified documents, and then submitted them for filing
6 with the clerk's office, which would be a big problem for him.

7 I'm not going to ask him if he did. I'm not going to
8 throw him in jail. This is not a contempt proceeding, this is
9 merely a proceeding to tell me why I should not revoke his
10 license to serve process. It's got nothing to do with his
11 liberties.

12 MR. MCCALL: With all due respect to the Court,
13 number one, he was given Miranda warnings which would put him
14 on notice that there's criminal liability.

15 THE COURT: That's right.

16 MR. MCCALL: Number two, you refer to allegations,
17 and I see no allegations.

18 THE COURT: Right, these people all here testified to
19 it, sir, you weren't here.

20 MR. MCCALL: Right, but there was no written
21 allegations.

22 THE COURT: I don't have to have written allegations,
23 that's where you're mistaken what this process is.

24 MR. MCCALL: I may be fully mistaken. I'm happy to
25 accept that I am mistaken.

1 THE COURT: You are.

2 MR. MCCALL: But, nevertheless, it's not clear to
3 him, and perhaps it would be -- I guess what we're talking
4 about is, he needs an opportunity to prepare, to see, and to
5 get the court reporter to type up what the testimony was.

6 I need to hire an investigator, so that if part of the
7 accusation is that he couldn't have done physically what he's
8 alleged to have done, in the time period that he's done, for
9 example, you know he was a courier for 21 years with my courier
10 company, not my personal courier company, but the one I used,
11 so I know that he can -- he knows all kinds of shortcuts and
12 whatever, and I want to see if, riding with an investigator, if
13 it can be done.

14 If that's one of the allegations, that's a factual thing
15 that needs physical time to go and research and to do his due
16 diligence.

17 THE COURT: He's had his time. Today we're going to
18 decide whether or not we're going to revoke his process. I
19 asked him simply at the last hearing if he understood what the
20 charges are against him, if he wished to testify under oath
21 about what he did or did not do. That's what that was about.
22 I'm not throwing him in jail, I'm not doing anything else to
23 him.

24 MR. MCCALL: May I ask where are the charges
25 alleged?

1 THE COURT: There are no charges alleged.

2 MR. MCCALL: You just said charges.

3 THE COURT: That's where you're mistaken.

4 MR. MCCALL: Didn't the Court just say charges?

5 THE COURT: I did not.

6 MR. MCCALL: I thought you used the word charges.

7 THE COURT: Allegations against him. There are no
8 charges against him, simply to revoke his license to serve
9 process.

10 MR. MCCALL: Where are the allegations, your Honor?

11 THE COURT: I just handed them to you. We had it in
12 the testimony the last time that Mr. Marco sat through and
13 heard it all.

14 MR. MCCALL: Okay, your Honor. There is nothing by
15 way of a written allegation, is that correct?

16 MS. GREENE: Actually, there is a letter that I sent
17 to the Court.

18 THE COURT: Ms. Greene has sent letters in.

19 MS. GREENE: I'm the one spear heading this whole
20 thing. I do have a letter that I sent to the Court, and I
21 believe I enclosed copies of the return citations in Dallas
22 County that I was aware of at that particular time.

23 MR. MCCALL: Your Honor, in terms of this person, my
24 client, Mr. Marco being served in an orderly process with the
25 written allegations against him, may the record reflect that he

1 has not so ever been served?

2 THE COURT: He's been served with an order to show
3 cause.

4 MR. MCCALL: Which is one page and has no factual
5 allegations.

6 MS. GREENE: You can hold them.

7 MR. MCCALL: If I may make a record, your Honor. Can
8 I call my witness?

9 THE COURT: You can make whatever you like.

10 MR. MCCALL: Could I call my client to the stand for
11 the limited purpose of showing that he has never been served
12 with anything in writing.

13 THE COURT: No, sir, I'm not going to do that. I
14 will take judicial notice with the fact that he was served with
15 an order to show cause signed by me to see whether or not your
16 license should be revoked to serve process.

17 MR. MCCALL: Thank you, your Honor. Will you take
18 judicial notice that that show cause order is one page? And I
19 would like to mark it, if the Court please.

20 THE COURT: You don't need to mark it, I'm not going
21 to accept it as an exhibit.

22 MR. MCCALL: Okay. Would the Court take judicial
23 notice that there's not one factual allegation in the notice to
24 show cause?

25 THE COURT: It's just an order to show cause why his

1 rights to serve process should be revoked.

2 MR. MCCALL: Right.

3 THE COURT: That's simply what it is. It's not a
4 criminal allegation, it's not any jail time, it's not anything.
5 But with the allegations that came to light, I told Mr. Marco
6 he may want to get himself an attorney, because the allegations
7 are serious against him.

8 MR. MCCALL: I understand, your Honor, but how is a
9 lawyer as an officer of the Court supposed to do his -- conduct
10 his due diligence if there's nothing in writing that the lawyer
11 can look at to determine what the factual allegations are?

12 THE COURT: First off, I need to know whether you're
13 going to represent him or not? Are you making an appearance on
14 his behalf today or not?

15 MR. MCCALL: I'm making an appearance to ask for a
16 continuance.

17 THE COURT: That's denied. We're going to go forward
18 with the hearing again today like we did last time.

19 MR. MCCALL: I would like to make an offer of proof
20 on my motion for continuance, that if I were allowed to call my
21 client, he would testify that he has approached me in the last
22 couple of weeks, that his wife is getting an insurance
23 settlement, that he is going to use some of those proceeds to
24 retain me, that he doesn't have the current ability to retain
25 me, for me to conduct due diligence to defend him on this.

1 But he has a liberty interest and a financial interest,
2 and a livelihood interest in this job. That it is extremely
3 important to him. As a matter of due process, we ask the Court
4 to give him a reasonable amount of time for his lawyer to see
5 something in writing as to what the factual allegations are by
6 way of getting the court reporter to type up the hearing that
7 occurred last time when no one was here when he had no counsel.

8 THE COURT: No, there were people here.

9 MR. MCCALL: When he had no counsel.

10 And that therefore that we can proceed in a way where he
11 can have effective assistance of counsel. And I think that's a
12 reasonable request, and we would ask the Court to reconsider
13 our motion for continuance in light of that offer of proof.

14 THE COURT: That's denied once again.

15 MR. MCCALL: Arch McCall, your Honor.

16 THE COURT: I said that's denied once again.

17 MR. MCCALL: Your Honor, may I introduce into
18 evidence -- would you receive as an exhibit what I've been
19 handed by opposing counsel, which is a letter of October 31st,
20 on the letterhead of The Guerrero Law Office, addressed today,
21 to this Court, with no indication that there was a copy sent to
22 my client.

23 It's a one and a half page letter regarding this matter.
24 But, again, it doesn't -- it states that all of these citations
25 have been reissued. So in terms of the underlying cases, as I

1 understand, all of these Defendants have been re-served.

2 MS. GREENE: Correct.

3 MR. MCCALL: So that in terms of anything that this
4 hearing has to do with pending cases, it doesn't affect -- this
5 hearing does not affect any of those pending cases, all of
6 those people have been re-served.

7 MS. GREENE: Correct, I take care of my clients.

8 MR. MCCALL: But it does affect his livelihood and
9 his ability to defend himself, and so therefore I would ask the
10 Court to take judicial notice -- does the Court have the
11 October 31st letter?

12 THE COURT: I have it right here in my file. I'll
13 take judicial notice of it. No need to put it in the record.
14 I think Ms. Greene wants her copy back.

15 MS. GREENE: Uh-huh.

16 THE COURT: Anything further?

17 MR. MCCALL: I've been handed three pieces of paper,
18 two of which say citation at the top. One is in the case of --
19 addressed to Jessie MacFarland. The other is addressed to
20 Felicia Murff.

21 MS. GREENE: Those are my Tarrant County cases that I
22 discovered around the same time I discovered everything else.
23 And I've already written to the Court in Tarrant County for the
24 same thing to happen.

25 THE COURT: Are those new ones, Ms. Greene, from the

1 last time?

2 MS. GREENE: Yes, I did have -- I did receive final
3 confirmation on those after I was here last time, bringing my
4 total up to eight. Five in Dallas County, three in Tarrant
5 County. And I didn't think we really needed to concern
6 ourselves with Tarrant County because we've got enough here in
7 Dallas.

8 THE COURT: I don't have any authority for Tarrant
9 County.

10 MS. GREENE: Right. I already have taken steps to
11 get this process going in Tarrant County also.

12 THE COURT: All right, very good.

13 Is there anybody here today that did not get a chance to
14 testify last time?

15 MS. GREENE: Andrea Stoller, your Honor.

16 MS. STOLLER: Andrea Stoller. I'm an attorney in
17 Dallas -- in Texas.

18 MS. GREENE: She has some information about things
19 that occurred after the last time we were here --

20 THE COURT: Okay.

21 MS. GREENE: -- that you may want to know about.

22 THE COURT: Ma'am, let me get you to raise your right
23 hand.

24 (Whereupon the witness was sworn.)

25 MS. GREENE: Do you want her -- to question her?

DIRECT TESTIMONY OF ANDREA STOLLER

1 THE COURT: You can just testify from there, that's
2 fine.

3 ANDREA STOLLER,
4 having been sworn, testified as follows:

5 MS. STOLLER: Do you want me just to tell you what
6 happened? My name is Andrea Stoller. My office is at 8117
7 Preston Road, Suite 300, Dallas, Texas, 75205. I'm an attorney
8 licensed to practice in the State of Texas since 1992. I was
9 contacted by Holly on the 26th of November.

10 MR. MCCALL: Excuse me, your Honor, may we have a
11 last name?

12 MS. GREENE: Greene.

13 THE COURT: Have a seat, Ms. Greene.

14 MS. GREENE: Thank you.

15 MS. STOLLER: On the 25th of November I had citation
16 issued in a case that was going to be in the family courts of
17 Dallas County. And John had done a lot of process serving for
18 me, so I called him and said, John, just like I always do,
19 John, the citation will be ready this afternoon, can you pick
20 it up? This man is going to need to be served, he's going to
21 appear in federal court the 1st of December at 9:00. But he's
22 from Thailand. He's going to leave and go back to Thailand.
23 Can you do this? Mr. Marco said, sure, I'll do it.

24 That's what he always does.

25 Subsequent to that, I got a call from Ms. Greene who had

DIRECT TESTIMONY OF ANDREA STOLLER

1 been made aware that Mr. Marco had picked this up, and she
2 said, do you understand there is an order entered by Judge Cox
3 and he is not supposed to be serving anything? And I said, no,
4 I had no idea. She said, did he tell you anything? Just that
5 he'd pick it up and serve it on Monday. In fact, he was going
6 to meet him in the federal court because we had to find my
7 client to show us what her husband looked like.

8 THE COURT: Right.

9 MS. GREENE: So when I found that out I called her
10 back on Wednesday. When I found it out I called Mr. Marco and
11 I asked him, I said, I need my citation back. I did not tell
12 him why. I indicated to him that I had changed my plans,
13 because I was afraid he wouldn't return it.

14 Thursday and Friday the courts were closed and I had to
15 have this guy served at 9:00 on Monday, so I had a few calls
16 back and forth with him, and finally on Friday, when I was out
17 of the office, he knew he could get up the elevators and just
18 put it on the front desk. And it was there for me.

19 But I had no idea of this. And I was really worried about
20 my client, because if he would have served it, I was afraid
21 that would be void service, if he was suspended, and we
22 couldn't get jurisdiction over this matter.

23 THE COURT: Okay, thank you.

24 MR. MCCALL: Your Honor, may I ask that the witness
25 take the witness chair, please?

CROSS OF ANDREA STOLLER BY MR. MCCALL

1 THE COURT: You have some questions for her?

2 MR. MCCALL: Yes, I do.

3 MS. GREENE: As an attorney, are you appearing for
4 him now?

5 MR. MCCALL: Yes, I am.

6 THE COURT: Now he's appearing.

7 Go ahead, Mr. McCall.

8 CROSS-EXAMINATION

9 BY MR. MCCALL:

10 Q. Would you state your full name, please.

11 A. Andrea K. Stoller.

12 Q. How do you spell Stoller?

13 A. S-t-o-l-l-e-r.

14 Q. What's your date of birth, please?

15 A. Your Honor, I think that's irrelevant.

16 THE COURT: You don't need that. He knows her
17 obviously. Your client knows her, right? So let's just move
18 on.

19 MR. MCCALL: I don't know what my client knows, your
20 Honor.

21 THE COURT: You're going to move on. We're not going
22 to get into her personal information.

23 Q. Did Holly Greene explain to you the -- what did Holly
24 Greene tell you with regard to John Marco?

25 A. That there had been a hearing on -- I believe around

CROSS OF ANNEA STOLLER BY MR. MCCALL

1 November 21st, in which John --

2 Q. That's 2003?

3 A. Yes.

4 In which John Marco had to appear -- appeared. I don't
5 know if he had to, but he appeared. And that as a result of
6 that hearing, his license to serve process was temporarily
7 suspended, that there was going to be a show cause hearing in
8 December, and did I know, did he tell me anything about his
9 license being suspended to serve process?

10 Q. And your answer to her was no, that he had not told
11 you that?

12 A. Right, not a word.

13 Q. Have you ever experienced the situation where a
14 process server will have another process server serve
15 something?

16 A. As far as John Marco goes, John Marco has always
17 served every one of mine.

18 Q. Right.

19 A. I'm am not aware -- he has never told me that he has
20 used anyone else. So, no, I've used John Marco for awhile
21 and --

22 Q. Has all of your service been satisfactory through
23 John Marco up to the conversation that you had with --

24 A. One, no.

25 Q. But most of it has been?

CROSS OF ANNEA STOLLER BY MR. MCCALL

1 A. Yes.

2 Q. And my question was earlier, are you aware of the
3 circumstance where a process server will accept process and
4 give it to another process server, either because he can't or
5 for whatever reason serve it himself?

6 A. No, I do not -- I don't go there. If I pick the
7 process server, that's who I want to do my service.

8 Q. I understand. But my question --

9 A. No.

10 Q. Are you aware that that happens?

11 A. No.

12 Q. You've never even heard of that in your experience as
13 a lawyer?

14 A. No.

15 Q. How long have you been practicing?

16 A. I already said since '92.

17 Q. What field do you practice in?

18 A. Basically mostly family law, some civil.

19 Q. Do you have any board certifications?

20 A. No.

21 Q. Okay. Now, you didn't give -- you talked to
22 Mr. Marco, is that correct?

23 A. Correct.

24 Q. And you didn't give him an opportunity to give you
25 any information whatsoever?

CROSS OF ANNEA STOLLER BY MR. MCCALL

1 A. You know what --

2 Q. Excuse me, did you hear my question?

3 A. Sure I did.

4 Q. Is that correct?

5 A. Yes, I did.

6 Q. You gave him an opportunity?

7 A. I sure did.

8 Q. What did you say to him?

9 A. I told him I needed the citation back.

10 Q. Right.

11 A. He did not bother to explain to me that he was --
12 that his license was suspended. He had the opportunity on the
13 phone to tell me anything he wanted.

14 Q. Excuse me?

15 A. Your question to me was, did I give him an
16 opportunity?

17 Q. Excuse me, Ms. Stoller, the question that I have for
18 you right now is, you called up and you said to him, give me my
19 citation back, is that correct?

20 A. That's correct.

21 Q. Okay. You did not ask him a question, is that
22 correct?

23 A. That, I can't remember.

24 Q. You can't remember whether you asked him a question?

25 A. I know he had the opportunity to tell me anything he

CROSS OF ANDREA STOLLER BY MR. MCCALL

1 wanted.

2 Q. But you can't remember whether you asked him a
3 question?

4 A. No.

5 Q. And certainly if he had given the process to a
6 legitimate and licensed and properly licensed process server to
7 serve, and your client got duly served, then that would have
8 been a legitimate thing under the law, wouldn't it have been?

9 A. Oh, I don't agree, no.

10 Q. You say that that --

11 A. I paid John Marco to serve, I don't pay somebody
12 else. I don't think that would be a legitimate thing.

13 Q. Excuse me, Ms. Stoller, I'm not asking whether you
14 think it would be a breach of contract, I'm asking whether
15 under the law you think that would be proper legal service?

16 THE COURT: I'm not going to allow this witness to
17 answer that, what's proper legal service. I don't need anybody
18 to tell me what proper legal service is.

19 MR. MCCALL: Your Honor, for the record, if she were
20 able to answer she would say that would be proper legal
21 service.

22 THE WITNESS: No, I don't think you can say what I
23 would say.

24 MS. GREENE: Objection.

25 THE COURT: Ms. Greene, you don't have the right to

CROSS OF ANNEA STOLLER BY MR. MCCALL

1 make objections.

2 I don't need anybody to tell me what proper service is, or
3 what happens or does not.

4 Do you have anything else for this witness? We need to
5 move along here.

6 Q. How long did the conversation last?

7 A. Maybe five minutes.

8 Q. About five minutes. And you called him?

9 A. Yes.

10 Q. And how long did your conversation last with attorney
11 Greene?

12 A. Maybe ten minutes. Maybe not even -- maybe five to
13 ten. Enough for me to know I needed that citation back.

14 Q. And what else did you discuss with Ms. Greene?

15 A. That was basically it.

16 Q. Just that, the temporary suspension?

17 A. I did ask her how they, you know, I was impressed
18 that somebody that didn't know me would advise me of something
19 that could be a potential problem. So I did ask how did she
20 know my name, how did she know he was going to serve that for
21 me.

22 Q. What did she say?

23 A. That when he walked in to pick up the citation there
24 was somebody there that I believe he had some kind of a
25 business relationship with, I don't remember the name, and they

1 were standing there in the lobby, and they had known of this
2 hearing, and he walked right by them, picked up the citation,
3 left, didn't recognize them, he didn't say hello or anything,
4 and so after that, that other person, I think, it's my
5 understanding, went to see what citation he signed out,
6 bothered to get it, and bothered to call me.

7 Q. Do you use courier services?

8 A. Rarely.

9 Q. Did you know that his background was — had been 21
10 years with one of the better courier services in Dallas?

11 A. Your Honor, I think that's irrelevant.

12 THE COURT: Do you have anything else? We need to
13 move along here.

14 MR. MCCALL: I would like to ask if she knows that.

15 THE COURT: It doesn't matter to me.

16 THE WITNESS: It's irrelevant.

17 MR. MCCALL: I would say it would be an important
18 employment fact. It would go to his credibility.

19 THE COURT: Once again, I'm not going to allow her to
20 answer it. Do you have anything else that you want to get into
21 with this witness? You've pretty much exhausted it, as best I
22 can tell.

23 MR. MCCALL: No further questions.

24 MS. STOLLER: Do you have any?

25 MS. GREENE: I'm not allowed to ask questions.

1 THE COURT: She can't object, nor can she ask
2 questions.

3 THE COURT: Anyone else here who didn't testify last
4 time who wishes to testify at all?

5 MR. MCCALL: Your Honor, may we know from the Court
6 what dates are being alleged?

7 THE COURT: You can get it from the transcript, if
8 you desire to have a copy of the transcript from the previous
9 hearing when Ms. Greene and several other people testified
10 specifically as to each act and each instance. It's in the
11 record.

12 MR. MCCALL: Thank you.

13 Your Honor, in order for that to do us any good, could we
14 have it and study it and come back to court and present our
15 defense at that time?

16 THE COURT: I'm not sure I'm going to do that, but
17 you can certainly get it, and I'll hold off, but his order to
18 suspend process is still in place.

19 MR. MCCALL: Yes, your Honor, we understand.

20 MS. GREENE: So you're not making a final
21 determination right now?

22 THE COURT: Not right now. But he is still suspended
23 from serving process.

24 What do you need to know, Ms. Greene?

25 MS. GREENE: I don't think it's right for him --

1 THE COURT: He can't serve process.

2 MS. GREENE: To be going downstairs, picking up
3 stuff, like what happened here. I don't think he should be
4 allowed to pick up anything at all.

5 THE COURT: Ms. Greene, I have no control over that,
6 you know that.

7 MS. GREENE: Okay.

8 MR. MCCALL: Your Honor, on that -- excuse me, your
9 Honor.

10 MS. GREENE: I need my other two pieces of paper back
11 from you.

12 MR. MCCALL: On that point --

13 MS. GREENE: The two citations that I gave you for
14 Tarrant County that you have in your possession.

15 MR. MCCALL: Would you look in your stack there,
16 Ms. Greene?

17 THE COURT: I thought he gave them back to you,
18 Holly.

19 MS. GREENE: They're here, I'm sorry.

20 MR. MCCALL: Your Honor, on that point, if I may
21 respectfully ask the Court, on this point is there anything
22 that prohibits him from picking up process and going to a
23 perfectly licensed process server and asking them to serve it?

24 THE COURT: Let's just say this. I don't think it
25 looks good for Mr. Marco to do that. I'm not going to prevent

1 him from doing that, but every time he does it, it raises
2 suspicion in my mind that he is continuing to violate my order
3 that does not allow him to serve process.

4 MR. MCCALL: Well, okay, your Honor, what if he takes
5 a copy of your order and gives it to --

6 THE COURT: Mr. McCall, I've said all I'm going to
7 say. I'm not going to give you advisory opinions, or rulings,
8 whatsoever. That's it. I just told you all I'm going to tell
9 you about it. He can make his own decisions. Every time he
10 serves it leaves me -- every time he picks up service, it leads
11 me to believe that he is out there violating my order. So be
12 that as it may, that's all I'm going to say. The hearing is
13 over, y'all need to go.

14 MR. MCCALL: I'm going to alert the Court that I'm
15 going to advise him that if he does that, he'll notify a lawyer
16 with a copy of your order, so there will be full disclosure
17 that he's acting basically as a courier to pick up process,
18 give it to another, so the job gets done. But he's not making
19 anything -- any representations other than --

20 THE COURT: That's fine.

21 MR. MCCALL: Thank you.

22 END OF PROCEEDINGS

23

24

25

1 THE STATE OF TEXAS

2 COUNTY OF DALLAS

3
4 I, SHARRON RODRIGUEZ RANKIN, Official Court Reporter in and
5 for the 160th Judicial District Court of Dallas County, State
6 of Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all portions of
8 evidence and other proceedings directed in writing by counsel
9 for the parties to be included in this Volume of the Reporter's
10 Record in the above styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported by me.

12 I further certify that this transcription of the
13 proceedings truly and correctly reflects the exhibits, if any,
14 offered by the respective parties.

15 I further certify that the total cost for the preparation
16 of this Reporter's Record is \$125 and was paid.

17 WITNESS my hand this the 24th day of February, 2004.

18
19 

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